

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 28196.....

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CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH :: GUWAHATI

ORIGINAL APPLN.NO.	28	OF 1995
TRANSFER APPLN.NO.		OF 1995
CONT EMPT APPLN.NO.		OF 1995 (IN NO.)
REVIEW APPLN.NO.		OF 1995 (IN NO.)
MISC.PETITION NO.		OF 1995 (IN NO.)

..... H. b. Dey APPLICANT(S)

-vs-

..... K. D. I. RESPONDENT(S)

For the Applicant(s) ... Mr. A.C. Sarma
Mr. D. Talukdar
Mr.

For the Respondent(s) ... Mr. A.K. Choudhury

OFFICE NOTE	DATE	ORDER
This application is in form and within time C. F. of Rs. 50. deposited vide IPO/BD No. 311718 Dated 12.2.96	23.2.96	<p>Mr. A.C.Sarma for the applicants. Leave to join in single application as prayed in para 4.3 of the O.A. is granted. Since it is stated that the matter is covered by the decision in O.A. 48/91 etc. dated 22.8.95, the O.A. is admitted. Issue notice to the respondents. Eight weeks for written statement. Adjourned to 13.5.96 for orders.</p> <p><i>60</i> Member</p>
Prayer for joint appln. para 4.3 of P.S.	13.5.96	<p>Mr A.C.Sharma for the applicant. Mr A.K. Choudhury, Addl.C.G.S.C for the respondents.</p> <p>Written statement has not been submitted. Mr Choudhury seeks six weeks time for filing written statement. It is seen that steps have not been taken by the applicant. Time allowed.</p> <p>List on 28.6.96 for written statement and further orders.</p> <p>Applicant to take steps within two days.</p> <p><i>60</i> Member</p>

(contd. to Page No. 2)

Bw

28.6.96

Mr A.C.Sarma for the applicants.

Notice have been served on respondent No.1. No written statement has been submitted. List for hearing on 25.7.96. The respondents may submit written statement in the meantime.

6
Member

pg

25-7-96

Learned counsel Mr.A.C.Sarma for the applicant. None for the respondents. List for hearing before Single Bench on 20-8-96.

6
Member

lm

Ans 7

20-8-96

Learned counsel Mr.A.C.Sarma for the applicant. Learned Addl.C.G.S.C. Mr.A.K. Choudhury seeks time for filing written statement.

List for written statement and further order on 18-9-96.

6
Member

lm

M 1/8

Learned counsel Mr A.C. Sarma for the applicants. Mr A.K. Choudhury, learned Addl. C.G.S.C. for the respondents seeks 3 weeks time to file written statement.

List for written statement and further orders on 7.10.96.

6
Member

nkm

(3)

O.A.No.28/96

7.10.96

Learned counsel Mr A.C. Sarma

for the applicant. Mr A.K. Choudhury, learned
Addl. C.G.S.C., for the respondents, prays
for further time to file written statement.

List for written statement and

further orders on 13.11.96.

6
Member

nkm

M/10

13.11.96

None for the applicant.

Mr. A.K.Choudhury, Addl. C.G.S.C.
for the respondents.

Written statement has not been
submitted.

List for written statement and
further orders on 13.12.1996.

6
Member

trd

M/11

13.12.96

Mr. A.C.Sarma for the

applicant.

Mr. A.K.Choudhury, Addl. C.G.S.C.
for the respondents.

Written statement has not been
submitted. Mr. Choudhury, Addl.C.G.S.C.
seeks time to file written statement.

List for written statement and
for further orders on 10.1.1997.

6
Member

trd



4
O.A.28/96

10-1-97 None for the applicant. Mr.A.K. Choudhury Addl.C.G.S.C. seeks 6 weeks time for filing written statement.

20-2-97

1) Notice duly served on R. No. 1.

2) Memo of appearance filed by Mr. A.K. Choudhury, Addl.C.G.S.C.

3) No written statement has been submitted.

M
20/2

1m

M
(P)

6
Member

List for written statement and further order on 21-2-96.

1-2-97 List for hearing on 14-3-97.

JB
Vice-Chairman

1m

21-2-97

No written statement has been filed. Several adjournment ~~they~~ have already been given. I am not inclined to grant any further extension of time to file written statement.

List this case for hearing on 14-3-97.

JB
Vice-Chairman

11-3-97

1) filed on 6/2/97
on R. No. 1, 2 & 3.

1m

M

1 3

14-3-97

Let this matter be listed for hearing on 9-5-97.

JB
Vice-Chairman

2) Notice duly served on R. No. 1.

3) w/s filed on behalf of the R. No. 1, 2 & 3.

9.5.97

On the prayer of Mr A.C. Sarma, learned counsel for the applicant the case is adjourned to 6.6.97 for hearing.

JB
Vice-Chairman

8-5-97
As regards written statement the case is ready for hearing.

1
9/5

pg

1215

9.6.97 The learned counsel for the (Kohima) applicant is not present in court today. For the ends of justice the case is adjourned till tomorrow, 10.6.97.

60
Member

nkm

JB
Vice-Chairman

10.6.97 Heard the learned counsel (Kohima) for the parties. Hearing concluded. Judgment delivered in open court contained in separate sheets and kept in the record.

The application is disposed of. No order as to costs.

60
Member

JB
Vice-Chairman

nkm

2.9.97
Copy of the Judgment has been issued to the applicant along with the L/Advocates for the Respondents. D. No. 2911 M 2912.

JB

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.266/96 and series

Date of decision: This the 10th day of June 1997
(AT KOHIMA)

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

.....

1. Original Application No.266 of 1996

Shri Ram Bachan and 14 others

By Advocate Mr A. Ahmed

....Applicants

-versus-

Union of India and others

By Advocate Mr S. Ali, Sr. C.G.S.C.

....Respondents

2. Original Application No.268 of 1996

Shri Nomal Chandra Das and 55 others

By Advocate Mr A. Ahmed

....Applicants

-versus-

Union of India and others

By Advocate Mr S. Ali, Sr. C.G.S.C.

....Respondents

3. Original Application No.279 of 1996

Shri D.D. Bhattacharjee and 31 others

By Advocate Mr A. Ahmed

....Applicants

-versus-

Union of India and others

By Advocate Mr S. Ali, Sr. C.G.S.C.

....Respondents

4. Original Application No.18 of 1997

Shri Hari Krishan Mazumdar and 24 others

By Advocate Mr A. Ahmed

....Applicants

-versus-

Union of India and others

By Advocate Mr S. Ali, Sr. C.G.S.C.

....Respondents

5. Original Application No.14 of 1997

Shri Jatin Chandra Kalita and 19 others

By Advocate Mr A. Ahmed

....Applicants

-versus-

Union of India and others

By Advocate Mr S. Ali, Sr. C.G.S.C.

....Respondents

22

6. Original Application No.91 of 1996

Shri Daniel Sangma and 81 others

.....Applicants

By Advocate Mr S. Sarma and Mr B. Mehta.

-versus-

Union of India and others

.....Respondents

By Advocate Mr G. Sarma, Addl. C.G.S.C.

7. Original Application No.87 of 1996

Shri C.T. Balachandran and 32 others

.....Applicants

By Advocate Mr S. Sarma and Mr B. Mehta

-versus-

Union of India and others

.....Respondents

By Advocate Mr G. Sarma, Addl. C.G.S.C.

8. Original Application No.45 of 1997

Shri L. Shashidharan Nair and 9 others

.....Applicants

By Advocate Mr S. Sarma and Mr B. Mehta

-versus-

Union of India and others

.....Respondents

By Advocate Mr G. Sarma, Addl. C.G.S.C.

9. Original Application No.197 of 1996

Shri P.C. George and 66 others

.....Applicants

By Advocate Mr S. Sarma

-versus-

Union of India and others

.....Respondents

By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

10. Original Application No.28 of 1996

Shri Hiralal Dey and 8 others

.....Applicants

By Advocate Mr A.C. Sarma and Mr H. Talukdar

-versus-

Union of India and others

.....Respondents

By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

B2

11. Original Application No.190 of 1996

1. National Federation of Information and Broadcasting Employees, Doordarshan Kendra, Nagaland Unit, represented by Unit Secretary - A. Beso.
2. Mr A. Beso, working as Senior Engineering Asstt. (Group C), D.D.K., Kohima,Applicants

By Advocate Mr S. Sarma and Mr B. Mehta

-versus-

Union of India and othersRespondents
By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

12. Original Application No.191 of 1996

Shri Kedolo Tép and 16 othersApplicants
By Advocate Mr S. Sarma and Mr B. Mehta

-versus-

Union of India and othersRespondents
By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

13. Original Application No.55 of 1997

1. Shri Ranjan Kumar Deb, Secretary, All India R.M.S. & Mail Motor Service Employees Union and 32 others.
2. Shri Prasenjit Deb, S.A., Railway Mail Service, Dimapur Railway Station, Dimapur, Nagaland.Applicants

By Advocate Mr N.N. Trikha

-versus-

Union of India and othersRespondents
By Advocate Mr G. Sarma, Addl. C.G.S.C.

14. Original Application No.192 of 1996

1. National Federation of Information and Broadcasting Employees, All India Radio, Nagaland Unit, represented by Unit Secretary - Mr K. Tep.
2. Mr Kekolo Tep, Transmission Executive, All India Radio, Kohima, NagalandApplicants

By Advocate Mr S. Sarma and Mr B. Mehta

-versus-

Union of India and othersRespondents
By Advocate Mr S. Ali, Sr. C.G.S.C.

15, Original Application No.26 of 1997

Shri Jagdamba Mali,
General Secretary, Civil Audit & Accounts
Association, and 308 other employees of
the Office of the Accountant General,
Kohima, Nagaland.

....Applicants

By Advocate Mr N.N. Trikha

-versus-

Union of India and others

....Respondents

By Advocate Mr G. Sarma, Addl. C.G.S.C.

.....
O R D E R

Date of decision: 10-6-1997

Judgment delivered in open court at Kohima (circuit
sitting). All the applications are disposed of. No order as to
costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (A)

nkm

ORDER

BARUAH.J. (V.C.)

All the above applications involve common questions of law and similar facts. Therefore, we propose to dispose of all the applications by this common order.

2. Facts for the purpose of disposal of the applications are:

The applicants are employees of the Government of India working in various departments including Defence Department. O.A.Nos.266/96, 268/96, 279/96, 18/97 and 14/97 are Defence Civilian employees under the Ministry of Defence, O.A.Nos.91/96, 87/96, 45/97, 197/96 and 28/96 are employees in the Subsidiary Intelligence Bureau Department under the Ministry of Home Affairs, in O.A.No.190/96 the members of the applicant Association are employees under Doordarshan, Ministry of Information and Broadcasting, and at present posted at Kohima, in O.A.No.191/96 the applicants are employees of the Department of Census, Ministry of Home Affairs, in O.A. No.55/97 the applicants are employees under Railway Mail Service under the Ministry of Communication, in O.A.No.192/96 the members of the applicant Union are employees of All India Radio, and in O.A.No.26/97 the applicant is an employee under the Comptroller and Auditor General.

3. All the applicants are now posted in various parts of the State of Nagaland. They are, except the applicant in O.A.No.55/97, are claiming House Rent Allowance (HRA for short) at the rate applicable to the employees of 'B' class cities of the country on the basis of the Office Memorandum No.11013/2/86-E.II(B) dated 23.9.1986 issued by the Joint Secretary to the Government of India, Ministry of Finance (Dept. of Expenditure), New Delhi, on the ground that they have been posted in Nagaland.

12
 The President of India issued an order dated 8.1.1962 to the effect that the employees of P&T Department in the Naga Hills and Tuensang Area who were not provided with rent free quarters would draw HRA at the rate applicable to the employees of 'B' class cities of the country on the basis of O.M.No.2(22)-E.II(B)60 dated 2.8.1960. However, the authorities denied the same to the employees ignoring the circular of 1986. Situated thus, being aggrieved some of the employees approached this Tribunal and the Tribunal gave direction to the authorities to pay HRA to those applicants with effect from 18.5.1986. Being dissatisfied with the aforesaid order passed by this Tribunal in O.A.No.42(G) of 1989, S.K. Ghosh and others -vs- Union of India and others the respondents filed SLP and in due course the Supreme Court dismissed the said SLP (Civil Appeal No.2705 of 1991) affirming the order of this Tribunal passed in O.A.No.42(G) of 1989 with some modification. We quote the concluding portion of the judgment of the Apex Court passed in the above appeal:

"We see no infirmity in the judgment of the Tribunal under appeal. No error with the reasoning and the conclusion reached therein. We are, however, of the view that the Tribunal has not justified in granting arrears of House Rent Allowance to the respondents from May 18, 1986. The respondents are entitled to the arrears only with effect from October 1, 1986 when the recommendation of the IVth Central Pay Commission were enforced. We direct accordingly and modify the order of the Tribunal to that extent. The appeal, therefore, disposed of. No costs."

From the judgment of the Apex Court quoted above, it is now well established that the employees posted in Nagaland would be entitled to get HRA as indicated in the aforesaid judgment.

4. The said judgment relates to the employees of the Telecommunication and Postal Department. Later on, the civilian employees of the Defence Department as well as employees of the other departments of the Central Government who were not paid HRA, therefore, being aggrieved by the action of the

respondents.....

respondents in refusing to give the benefit of the HRA in terms of the judgment of the Apex Court quoted above, some employees approached this Tribunal by filing several original applications. All the applications were disposed of by this Tribunal by a common order dated 22.8.1995. In the said order this Tribunal allowed the original applications and directed the respondents to pay HRA to those applicants. The Tribunal, in the aforesaid order, among others observed as follows:

"1.(a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same."

Thereafter the civilian employees of Defence Department also claimed HRA on the basis of the said judgment of the Apex Court and circular dated 23.9.1986 by moving various applications, namely, O.A.No.124/95 and O.A.No.125/95. This Tribunal by yet another common order dated 24.8.1995 passed in O.A.Nos.124/95 and 125/95 allowed the applications directing the respondents to pay HRA to the Defence civilian employees posted in Nagaland in the same manner as ordered on 22.8.1995 above. These orders were, however, challenged by the respondents before the Apex Court and the said appeals alongwith some other appeals were disposed of by the Apex Court in C.A.No.1592 of 1997 dealing with Special (Duty) Allowance and other allowances. However, the Apex Court did not make any reference to HRA in the order dated 17.2.1997. Therefore, it is now settled that the employees posted in Nagaland are entitled to HRA.

5. In view of the above and in the line of the Apex Court judgment and this Tribunal's order dated 22.8.1995 passed in O.A.Nos.48/91 and others we hold that all the applicants in the above original applications are entitled to HRA at the rate applicable.....

applicable to the Central Government employees of 'B' class of cities and towns for the period from 1.10.1986 or from the actual date of posting in Nagaland if the posting is subsequent to the said date, as the case may be, upto 28.2.1991 and at the rate as may be applicable from time to time from 1.3.1991 onwards and continue to pay the same till the said notification is in force.

6. Accordingly, we direct the respondents to pay the applicants HRA as above and this must be done as early as possible, at any rate within a period of three months from the date of receipt of the order.

7. In O.A.Nos.91/96, 87/96, 190/96, 191/96, 45/97, 192/96, 197/96 and 55/97, the applicants have also claimed 10% compensation in lieu of rent free accommodation. The learned counsel for the applicants submit that this Tribunal in O.A.No.48/91 and others have already granted such compensation. Mr S. Ali learned Sr. C.G.S.C. and Mr G. Sarma, learned Addl. C.G.S.C., do not dispute the same.

8. We have gone through the order dated 22.8.1995 passed in O.A.No.48/91 and others. In the said order this Tribunal, among others, passed the following order:

"2.(a) Licence fee at the rate of 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided."


The aforesaid judgment covers the present cases also. Accordingly, we hold that the applicants are entitled to get the compensation in lieu of rent free accommodation in the manner indicated

in.....

in the said order.

9. Accordingly we direct the respondents to pay to the applicants 10% compensation in lieu of rent free accommodation as above. This must be done as early as possible, at any rate, within a period of three months from the date of receipt of this order.

10. All the applications are accordingly disposed of. However, considering the entire facts and circumstances of the case we make no order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (A)

nkm

19 FEB 1996

Gauhati Bench
गोप्ती बैठक

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GAUHATI BENCH:: GAUHATI.

76
Filed by H.L. DEY
and others
through
A.C. Sharma
Advocate
19.2.96

(AN APPLICATION UNDER SECTION 19 OF THE C.A.T.,
ACT, 1985)

28
O.A. No. of 1996

Sri H.L. DEY and Others

-Versus-

Union of India and others

I N D E X

<u>S1.No.</u>	<u>Annexure</u>	<u>Particulars</u>	<u>Page No.</u>
1.	A	Ministry of Finance Memorandum dated 23.9.86.	-12-
2.	B	Judgement dated 22.8.95 passed by the C.A.T. Gauhati Bench in O.A. Nos. 48/91, 2/94, 11/95, 37/95 105/95	-15-

contd...2

R.
A.C. Sharma
Advocate
19/2/96

-BETWEEN-

1. Sri Hiralal Dey
2. Sri Sukhomoy Dala
3. Sri Hilarious Murmu
4. Sri Amarjit Chakravarty
5. Sri Paramananda Das
6. Sri Biswajit Dam
7. Sri M.L. Dey
8. Sri P.K. Das
9. Smti. Hemangi Das

(On behalf of her deceased husband

M.C. Das)

All are at present working at SIB
Guwahati.

....APPLICANTS

-AND-

1. The Union of India

Represented by the Secretary,
Ministry of Home Affairs, New Delhi.

2. The Director, Intelligence Bureau,
Ministry of Home Affairs, ~~Govt~~ of
India, New Delhi.

3. The Assistant Director, Subsidiary
Intelligence Bureau, Ministry of
Home Affairs, Govt. of India,
Kohima.

.... RESPONDENTS

contd...3

DETAILS OF APPLICATION

1. Particulars of the order against which the application is made:

The application is made against non payment of house rent allowance as per the rates prescribed for B Class cities and for grant of compensation in lieu of rent free accommodation to the applicants for the period during which they were posted at S.I.B. Kohima in the district of Nagaland in view of the Judgement dated 22.8. 1995 passed by this Honourable Tribunal in O.A. No. 37/95 (Sri N. Aizer and others Vs Union of India and others) .

2. Jurisdiction of the Tribunal:

The applicants declare that the subject matter on which they have prayed for is within the jurisdiction of this Tribunal .

3. Limitation:

The applicants further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act 1985.

4. Facts of the Case:

4.1. That, all the applicants are citizens of India and therefore, they are entitled to all the rights,

protections and privileges guaranteed under the Constitution of India.

4.2. That all the applicants except the applicant no. 9 ^{are} working at S.I.B. Guhati, but prior to that all of them including the husband of the applicant No.9 were working at S.I.B. Kohima in the State of Nagaland in the post and for the period shown below against each of them.

- i) Hiralal Dey L.D.C. - 1.1.86 to 24.1.91
- ii) Sukhomoy Bala, L.D.C. - 16.4.90 to 13.9.93.
- iii) Hilarious Murmu-L.D.C. 27.7.87 to 12.7.92.
- iv) Amarjit Chakravarty, L.D.C. - 28.4.86 to 10.4.92.
- v) Paramananda Das, L.D.C. - 1.7.90 to 31.8.92.
- vi) Biswajit Das, J.D.O. - 1.3.79 to 15.10.90
- vii) M.L. Dey, L.D.C. - 1.1.86 to 13.7.92.
- viii) P.K. Das, L.D.C. - February'90 to July'94.
- ix) Late M.C. Das, L.D.C. - 7.9.87 to 11.5.90.

(Husband of Hemangi Das,
the petitioner No. 9).

The applicant No. 6 belong to Group B Category and all others belong to group 'C' category. The applicant No. 9 is the wife of late M.C. Das who was an employee of S.I.B. at Kohima during the period as shown above and the applicant No. 9 being his legal successor has made this claim on behalf of her deceased husband.

4.3. That, the applicants have got same cause of action and the nature of relief claimed for is also same and as such they have filed this application joint-ly. The case is fully covered by the provisions of Rule 4(5) of the CAT (Procedure) Rules 1987 and as such the applicants may be permitted to join together in one application.

4.4. That, the employees of S.I.B. and all other Central Govt employees posted in the State of Nagaland are required to be provided with rent free accommodation. However, if they can not be provided with such accommodation, they are entitled to house rent allowance (H.R.A. for short) as in 'B' class cities declared by the Government of India. Such employees are also entitled to compensation in lieu of rent free accommodation (R.F.A. for short). Under this provision the applicants were also entitled to H.R.A. and compensation in lieu of rent free accommodation for the respective period they served at Kohima as shown above as they were not provided with any rent free accommodation during those periods.

4.5. That, the State of Nagaland is considered as a specially difficult area for the purpose of rental accommodation and therefore the Central Government employees posted there are either given rent free accommodation or where such accommodation cannot be provided by the Government, the employees are entitled

to H.R.A. and compensation at the rate applicable to 'B' Class cities.

4.6. That, the 4th pay commission made certain recommendation regarding grant of H.R.A. and compensatory allowances to the Central Government employees and in pursuance of such recommendation the Government of India, Ministry of Finance vide their memorandum dated 23.9.86 communicated the decision of the Government of India on the matter and the Rates for H.R.A. and compensatory allowances were prescribed. It was also communicated by the aforesaid decision that the H.R.A. at the rate shown shall be paid to all employees without requiring them to produce rent receipt.

(A copy of the aforesaid memorandum dated 23.9.86 is annexed herewith as Annexure-II).

4.7. That, it is obvious from the aforesaid memorandum that the recommendation of the 4th Pay Commission was accepted by the Government and accordingly the applicants were also entitled to H.R.A. and compensation in lieu of R.F.A. ~~for~~ for the permissible period of their service at Kohima,

4.8. That, the employees of the other Central Government departments at Kohima are already enjoying the above benefits. The employees of some Central Government departments like Postal, Geological Survey of India etc. at Kohima approached this Hon'ble Tribunal and they have been allowed the benefits of the above allowances.

4.9. That lastly as many as 127 numbers of employees of the Subsidiary Intelligence Bureau belong to Group C. and Group D Category and posted at S.I.B. Kohima and S.I.B. Dimapur also filed an application being O.A. No. 37/95 (Shri N. Aier and 126 others Vs. Union of India & others) before this Hon'ble Tribunal claiming claiming House rent Allowance at the rate of 15% and compensation inlieu of rent free accommodation to all the applicants as applicable to the Central Government employees posted in the 'B' Class cities w.e.f. 1.10.86. The aforesaid application was allowed along with some other applications made on similar prayer by the employees of some other Central GOVERNMENTS departments posted in Nagaland by a common judgement dated 22.8.95 passed by this Hon'ble Tribunal.

(A COPY of the above judgement is annexed herewith as Annexure-2).

4.10. That , it has been made clear in the above judgement that the compensation payable in lieu of rent free accommodation is consisted of two components namely

- i) Licence fee at the rate of 10% and
- ii) House rent allowance (at prescribed rate)

4.11. That, the applicants could not joint in the earlier O.A. No. 37/95 as they have already been transferred to Guwahati. However the applicants being similarly

circumstanced during their service at Nagaland with the applicants of the O.A. No. 37/95 as the present applicants were also not provided with any rent free accommodation during their service at Kohima; they are entitled to the house rent allowance and Licence fee accordingly for the respective period of their permissible Service at Nagaland as shown ~~as~~ at Paragraph No. 4.2 above.

4.12. That, the present applicants also approach the respondents for payment of the above allowance but the respondents are not considering the prayer of the applicants .

4.13. That, the injustice caused to the applicants is a continued one and therefore the application is within the limitation prescribed under SECTION 21 of the Administrative Tribunal Act.

4.14. That this application has been made bonafide and for the end of justice.

5. Grounds for relief with legal provisions:

5.1. For that the applicants of the O.A. No. 37/95 being already payed the house rent allowance and the licence fee in lieu of rent free accommodation, the present applicants are also entitled for the same for their service at Kohima in the state of Nagaland.

5.2. For that it is a well settled proposition of law that if some employees are found entitled to certain benefits all similarly circumstanced employees also should

be extended with the similar benefits.

5.3. For that non payment of the above allowances to the applicants is discriminatory and violative of the rights guaranteed under Part III of the Constitution of India.

5.4. For that the applicants have already suffered the inconvenience during their service at Nagaland without being provided any accomodation by the respondents for which they are now entitled to be compensated through payment of allowances as mentioned in the body of the application.

5.5. For that in view of the judgement dated 22.8.95 passed by this Hon'ble Tribunal in the O.A. No. 37/95 along with O.A. No. 48/91, 2/94, 11/95 and 105/95, and in view of the judgement passed by the Hon'ble Supreme Court in the Civil Appeal No. 2705/91 (Union of India & others Vs. S.K. Ghose and others) and in view of the recommendation of the Fourth Pay Commission , the claim of the applicants are genuine and the respondents are to be directed to make payment of the same to the applicants forthwith.

6. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT.

The applicants further declare that they had not filed any application, Writ petition or Suit regarding the matter in respect of which the application have been made

before any Court of law or any other authority and/or other bench of the Tribunal and/or any such application, Writ petition or suit is not pending before any of them.

7. RELIEF SOUGHT FOR :

Under the facts and circumstances of the case the applicants pray that Your Lordship would be pleased to admit this petition issue notice on the respondents to show cause as to why the applicants will not be allowed the relief sought for in this application, call for the records and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs.

- i) A declaration that all the applicants are entitled to house-rent allowance at permissible rate w.e.f. 1.10.86 as well as compensation in lieu of rent free accommodation (licence fee) applicable to the Central Government employees in 'B' Class city till their service at Kohima as shown in paragraph 4.2. above.
- ii) A direction to the respondents to make payment of House rent Allowance at the prescribed rate and Licence fee at the rate of 10% to the applicants for their period of service at Kohima.
- iii) Cost of the application.
- iv) Any other relief or reliefs to which the applicants are entitled.

8. The application is filed through Advocate.

9. PARTICULARS OF THE I.P.O.:

i) I.P.O. No. : 09 311718

ii) Date : 12-2-96

iii) Payable at : Ganbhat

10. LIST OF ENCLOSURES:

As stated in the INDEX.

VERIFICATION

I, Shri Hiralal Dey, working at present in
the Subsidiary Intelligence Bureau, ^{Ganbhat} do hereby state
and verify that the statements made in the paragraph
.....1..... to4..... are true to my knowledge
and rest are my humble submission to this Hon'ble
Tribunal. I am also duly authorised to sign this
this Verification on behalf of all other applicants
and I have not suppressed any material fact and I sign
this verification on this 14th day of ^{February} January, 1996.

H. L. Dey

SIGNATURE

A. 28/97/473 अ. 18/3/97

Response 3

प्राप्ति-स्वीकृति (रस्ते) / अप्ति " / ACKNOWLEDGEMENT

Notice

स्त्री
वामा

पत्र/पोस्टकार्ड/पैकट/पार्सल प्राप्त हुआ

क्रमांक

नं-

✓

★ रेजिस्ट्रेक्ट/वैद्यकीय पत्र/पोस्ट कार्ड/श्याकेट/पार्सल प्रिसाम

No.

* Received a Registered
Insured Letter/Postcard/Packet/Parcel

The Director of Posts

पान वाले का नाम

प्राप्तकर नाम टिकाना

Addressed to (name).

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● वाप का मूल्य (रुपयों में)

● विश्वाकृत अर्थेर परिमान

● Insured for Rupees

वितरण की तारीख

दिनांक तारिख

Date of delivery

} 19

पाने वाले के हस्ताक्षर/अपकृत संकेत/Signature of 20

★ अन्य वाले की काट दिया जाये/अप्रयोक्तीय वाला क्षेत्रे दिन/Score out the matter not required

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R.P.-54

भारतीय डाक-विभाग/भारतीय डाक विभाग
DEPARTMENT OF POSTS, INDIA

तांरीख-मोहर

ଅଧିକ ପ୍ରାଚୀନତା

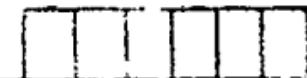
प्रेषक डाकघर की नाम-मोहर/ग्रहणकारी डाकघरों का नामेव छाप मोहर

Name-Stamp of office of posting

Date Stamp

हे का पता /ठेरकेन नाम ठिकाना/ Sender's address

पिन /पिन/Pin



No. E-45/KMA-CAT/96(2)- 9463-CT
Subsidiary Intelligence Bureau
(MHA) Govt. of India
Beltola Basistha Road,
Guwahati-28

To

Dated Guwahati, the 24/7/96

The Deputy Registrar,
Central Administrative Tribunal
Guwahati.

Sub:- O.A. No.28/96, 87/96 and 91/96 filed
by S/Shri H.L.Dey, C.K.Balachandran and
D.Sangma claiming arrear of HRA.

Sir,

The above O.As were listed for hearing on
the following dates as mentioned against each O.A.

(1) OA No.28/96	✓	-	25.7.96
(2) OA No.87/96	✓	-	23.7.96
(3) OA No.91/96	✓	-	26.7.96

We have requested the concerned Govt.
counsel for obtaining extension of time for submission
of counter reply from the Hon'ble CAT. As the above
mentioned OAs relate to identical issues, it is
requested that arrangement may please be made to
hear these cases together.

An early action in this regard will be
highly appreciated.

Yours faithfully,

Asstt. Director
Asstt. Director
24.7.96

R.S.P.
25/7/96
C.O.

No. 11013/2/86-E-II(b)
 GOVERNMENT OF INDIA MINISTRY OF
 FINANCE (Department of Expenditure)

New Delhi the 23rd September 1986.

OFFICE MEMORANDUM

Sub : Recommendation of the Fourth Pay Commission, Decision of the Government relating to grant of Compensatory (City) & House Rent Allowance to Central Government Employees.

The undersigned is directed to say that on account upon the decision taken by the Government on the recommendation of the Fourth Pay Commission relating to the above mentioned following vide this Ministry's resolution No. 14(1)/T/86 dt 13th September 1986, the President is pleased to decide that in modification of this Ministry O.M. No. F.2(37)-E-II(b)/64 dated 27.11.1985 as amended from time to time for compensatory (City) and House Rent Allowances to Central Government employees shall, be admissible at the following rates :

COMPENSATORY(CITY) ALLOWANCES

Pay Range (Basic Pay)	Amount of C.C.A. in class of cities	Rs. p.m.		
		A	B-1	B-2
Below Rs. 950		30	25	20
Rs. 950 and above but below Rs. 1500		45	35	20
Rs. 1500 and above but below Rs. 2000		75	50	20
Rs. 2000 and above		100	75	20

Note : For 14 special localities, where C.C.A. at the rates applicable to B-2 class city are being paid, fresh orders will be issued separately.

II) HOUSE RENT ALLOWANCES

Type of accomodation to which entitled les or pay for entitlement.	Pay range in revised scale	Amount of H.R.A. payable Rs.p.m.			
			A, B-1, B-2 class cities.	C class cities	Unclassified places.
	750-949	150	70	30	
	950-1499	250	120	50	
	1500-2799	450	220	100	
	2800-3599	600	300	150	

Contd...

Attested by
 A.C. Sarker
 Secretary
 19-2-96

2. H.R.A. at above rates shall be paid to all employees (other than those provided with Government owned/bird accommodation) without requiring them to produce rent receipt. These employees shall however, be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing towards rent. H.R.A. at above rates shall also be paid to Government employees living in their own houses subject to their furnishing certificate that they are paying/contributing towards house of property tax or maintenance of the house.

3. Where H.R.A. at 15 percent of pay has been allowed under special orders, the same shall be given as admissible in A, B-1, and B-2 class cities. In other cases covered by special order, HRA shall be admissible at the rate in C class cities. In both these cases there shall be no upper age limit for payment of HRA.

4. The other condition at present applicable for grant of HRA in cases of hearing of accommodation and other categories shall continue to be applicable.

5. Pay for the purpose of these orders, will be 'pay' as defined in F.R.9(21) (a)(i). In the case of persons who continue to draw pay in the scales of pay which prevailed prior to 1.1.1986 it will include in addition to pay in the pre-revised scales, dearness pay, dearness allowance, additional Dearness Allowance Ad-hoc DA and Interim Relief appropriate to that pay, admissible under orders in existence on 31.12.85.

6. These orders shall be effective from 1.10.1986. From the period from 1.1.1986 to 30.9.1986, the above allowance will be drawn at the existing rates on the national pay in the pre-revised scale.

7. These orders will apply to civilian employees of the Central Government belonging to Group 'B' 'C' & 'D' & only. The orders will also apply to the Group 'B' 'C' & 'D' civil employees paid from the Defence Service's Estimates. In regard to Armed Forces Personnel and Railway Employees, separate

Contd...

orders will be issued by the Ministry of Defence and Department of Railway respectively.

8. In so far as the persons serving in the Indian Audit and Accounts Department are concerned this order is issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version of the order is attached.

Sd/-

(R.P. Varma)
Joint Secretary to the Government of India.

To

All Ministries and Department of Government of India etc. as per distribution list.

Copy forwarded to C&AG and UPSC etc. (with usual number of spare copies) as per standard endorsement list.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 48 of 1991 (Nagaland)

with

Original Application No. 2 of 1994 (Nagaland)

with

Original Application No. 11 of 1995 (Nagaland)

with

Original Application No. 37 of 1995 ✓

with

Original Application No. 105 of 1995

Date of decision : This the 22nd day of August, 1995, at Kohima.

The Hon'ble Justice Shri M.G.Chaudheri, Vice-Chairman.

The Hon'ble Shri G.L.Sanglyine, Member (Administrative).

Original Application No. 48/91 (Nagaland).

Shri M. Lepdon Ao & 46 Others
belonging to C & D Group of employees posted
in the office of the Director, Geological Survey of India,
Operation Manipur-Nagaland, Dimapur, District, Kohima,
Nagaland ... Applicants

By Advocate Mr. N.N.Trikha

- Versus -

1. The Union of India, represented by the Secretary
to the Government of India, Ministry of Steel and
Mines, Department of Mines, New Delhi.

2. The Director General,
Geological Survey of India,
27, Jawaharlal Nehru Road,
Calcutta-700 016

3. The Deputy Director General,
Geological Survey of India
North Eastern Region,
Asha Kutir,
Laitumkhrah,
Shillong-793003

4. The Director,
Geological Survey of India,
Operation Manipur-Nagaland,
Dimapur.

.... Respondents

By Advocates Mr. S. Ali, Sr. C.G.S.C. and A.K.Chaudhury, Addl.C.G.S.C.

Sub

O.A. No. 2/94 (Nagaland).

1. All India Postal Employees Union P(III) & A.D.A., Divisional Branch Kohima - 797001, represented by its Divisional Secretary - Mr. V. Angami.
2. All India Postal Employees Union Postman Class IV & E.D., Kohima Branch, Nagaland, represented by its Divisional Secretary - Mr. K. Tali Ao.

..... Applicants

By Advocates Mr. B.K.Sharma with M/s M.K.Choudhury, and S.Sarma.

-Versus-

1. The Union of India, represented by the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. The Director General, Posts, New Delhi-110 001
3. Chief Postmaster General, N.E.Circle, Shillong
4. The Director of Postal Services, Nagaland Division Kohima

..... Respondents

By Advocate Mr. G.K.Sarma, Addl. C.G.S.C.

O. A. No. 11/95 (Nagaland).

Nagaland Census Employees' Association represented by its President Mr. L. Angami Directorate of Census Operations, Nagaland, Kohima

..... Applicant

By Advocates Mr. B.K.Sharma with M/s M.K.Choudhury and Mr. S.Sarma.

-Versus-

bill

1. The Union of India
represented by the Secretary
Ministry of Home Affairs,
New Delhi-1
2. The Registrar General of India,
2/A, Mansingh Road,
New Delhi-110001.
3. The Director of Census Operations,
Nagaland,
Kohima

..... Respondents

By Advocate Mr. G. Sarma, Addl. C.G.S.C.

D.A. No. 37/95

Shri N. Aier,
Assistant and 126 Others

..... Applicants

By Advocates Mr. B.K. Sharma with M/s M.K. Choudhury and S. Sharma

-VIA RUE-

1. The Union of India,
represented by the Secretary
Ministry of Home Affairs
New Delhi-1.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
Kohima
3. The Assistant Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs,
Government of India
Kohima

..... Respondents

By Advocate Mr. G. Sarma, Addl. C.G.S.C.

bill

U.A. No. 100/06

Shri P.H. Babu and 17 Others

..... Applicants

By Advocate Mr. T.K. Dutta.

-Versus-

1. Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Steel and Mines,
Department of Mines,
New Delhi.

2. The Director General,
Geological Survey of India,
27, J.L.Nehru Road,
Calcutta-700 013

3. The Deputy Director General,
Geological Survey of India
North Eastern Region
Asha Kutir, Laitumkhrah,
Shillong-793003

4. The Director,
Geological Survey of India
Operation Manipur-Nagaland,
Dimapur

..... Respondents

By Advocate Mr. G.Sarma, Addl. C.G.S.C.

Judgement

CHAUDHARI J. (V.C.)

All these applications relate to similar claim made
by Group C and D employees of the different departments of Govt.
of India (concerned in the respective applications) posted in
Nagaland and common questions of law arise for determination hence
for the sake of a comprehensive consideration of material issues
involved and convenience these are being disposed of by this common
Judgement.

file

2. The case of the applicants is that ^{as} Central Government B, C & D Group employees posted in Nagaland they are eligible for free furnished accommodation but none has been provided to them and therefore they are entitled to be paid compensation in lieu of the rent free accommodation (consisting of licence fee and House Rent Allowance) but since that is being denied to them and their various representations have not yielded any positive result, they have approached the Tribunal for redressal. They pray that they be held entitled to get the licence fee and house rent allowance retrospectively from due dates.

3. Facts in O.A. 48/91

(a) This application has been filed by 47 Group C and D employees of Geological Survey of India (Ministry of Steel and Mines, Govt of India) who are posted in Nagaland. Their claim is mainly based on following Memoranda & Orders :

1. O.M. No. 2(22)-E-II(B)/60 dated 2.8.60 read with letter No. 41/17/61 dated 8.1.62 from the D.G. P & T Annexure A.4.
2. O.M. No. 11013/2/86-E-II(B) dated 23.9.86 issued by Ministry of Finance, Govt. of India consistently with the recommendations of the 4th Central Pay Commission and Order No. 11015/41/86-E-II(B)/87 dated 13.11.87 and
3. Earlier decisions of Central Administrative Tribunal, Gauhati Bench with the decision of Hon'ble Supreme Court.

(b) The respondents have filed a common written statement and resist the application. They have raised the bar of limitation on the ground that the cause of action had arisen in 1986 and that

first

could not be agitated in 1991 and contend on merits inter alia that there have been no instructions from the Ministry of Finance that Central Government Employees posted at Dimapur are entitled to rent free accommodation. They however state that O.M. dated 19.2.87 provides that where rent free accommodation is not available the Group A, B, C & D are entitled to House Rent Allowance plus licence fee in lieu of rent free accommodation. Thus the grievance of the defence is that since the applicants are not persons eligible to get the benefit at Dimapur they do admit that in lieu of rent free accommodation where it is not provided House Rent Allowance plus licence fee would be payable in lieu thereof.

(c) Arguments of Mr. Trikha and Mr. Ali have been heard.

4. Facts in O.A. 2 of 1994.

(a) All India Postal Employees Union Postmen (III) and Extra Departmental Agents and the All India Postal Employees Union Postmen Class (IV) and Extra Departmental Kohima Branch are espousing the cause of Group C and Group D employees of Postal Department posted throughout Nagaland Division, in this application. Their grievance is the same, namely, that they are entitled to rent free accommodation or compensation in lieu thereof with House Rent Allowance @ applicable to B Class Cities but the respondents are denying to extend that benefit to them and have not responded to their representations. Additionally their grievance is that although between January 1974 and December 1979 they were paid House Rent Allowance @ 15% of pay plus Additional House Rent Allowance @ 10% of their pay that has been illegally reduced to 7.5% from 1.5.1980. They rely on self-same material as relied upon by the applicants in the companion cases and

full

their contentions are also the same. They pray similarly for a declaration that all the employees of Postal Department posted in Nagaland are entitled to House Rent Allowance applicable to Central Government Employees posted in 'B' Class Cities with effect from 1.10.1986 and for a direction to the respondents to release the same accordingly with effect from 1.10.1986.

(b) The respondents have filed a common written statement and the contentions raised are similar as in companion cases. They deny the claim. They inter alia contend that the staff of P & T Department is not eligible to the benefit claimed.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl.C.G.S.C. have been heard.

5. Facts in O.A. 11/95.

This application has been filed by the Nagaland Census Employees' Association for and on behalf of Group C & D employees of Census Operation, posted in Nagaland. Their contentions are similar to those made by the applicants in O.A. 48/91. They rely on certain additional material as they have approached the Tribunal in 1995 whereas the other O.A. was filed in 1991. These applicants state that by virtue of the Presidential Order issued on 8.1.62 the cities in the State of Nagaland are equated to cities which have been classified as 'B' Class cities for the purpose of payment of House Rent Allowance and it is still operative and entitles the applicant employees the benefit of House Rent Allowance. They further state that the State of Nagaland is considered to be a difficult area for the purpose of rented accommodation. The employees posted in the State are therefore entitled to rent free accommodation or House Rent Allowance in lieu thereof applicable to 'B' Class cities. The applicants

also point out that in view of the Arbitration Award which held that employees of the Directorate of Census Operations posted in Nagaland are entitled to get House Rent Allowance and personal allowance at the same rate as that of employees of Post & Telegraph Department from 1.5.1976 and although pursuant thereto respondents have been paying the House Rent Allowance that is being paid at the rate meant for 'C' Class cities they have denied payment at the rate meant for 'B' Class Cities to which they are entitled. They also make a grievance that a differential treatment is being given to them in denying that benefit whereas Central Government employees in other departments have been given that benefit. They contend that all Central Government Employees posted in Nagaland are entitled to House Rent Allowance at the rate admissible to B-Class cities and they are also entitled to compensation in lieu of rent free accommodation. The applicants state that they have filed representations to the respondents but have received no response hence they have approached the Tribunal for relief. They pray for a declaration to the effect that all Group 'C' and 'D' employees of the Directorate of Census Operation posted in Nagaland are entitled to House Rent Allowance as well as compensation in lieu of Rent Free Accommodation applicable to the Central Government Employees posted in B Class cities with effect from 1.10.1986 and for a direction to the respondents to release to them House Rent Allowance @ 15% and compensation in lieu of rent free accommodation with effect from 1.10.1986.

(b) The respondents by a common written statement resist the application. Their contentions inter alia are as follows :

- i. There is no provision for providing rent free accommodation to employees of Directorate of Census Operations, Nagaland.

ii. For Government accommodation the employees/occupants are supposed to pay licence fee, hence it cannot be termed as rent free accommodation.

iii. House Rent Allowance is being paid according to pay slab of the individual employees as per rules and there is no special order issued for payment at higher rate.

iv. The applicants cannot compare themselves with other departments where higher House Rent Allowance may have been paid looking to the nature of duties and responsibilities under different working conditions. Likewise essential services cannot be equated with non-essential services. Thus applicants are not similarly circumstanced employees.

(c) The thrust of the defence therefore is to say that applicants are not eligible for rent free accommodation and it is not disputed that on being found to be eligible to the same they would be entitled to the prescribed compensation in lieu of the rent free accommodation.

(d) Arguments of Mr. B.K.Sharma and Mr. G.Sharma, Addl. C.G.S.C. have been heard.

6. Facts in O.A. 37/95

(a) The 127 applicants are employees of Subsidiary Intelligence Bureau posted in the State of Nagaland. Applicants at serial Nos. 1, 2, 4, 13, 18, 33, 56, 62, 70, 76, 79, 80, 105 and 124 are Group 'B' (non-gazetted) employees and others are Group 'C' & 'D' employees. They pray for a declaration to the effect that they are entitled to House Rent Allowance and compensation in lieu of Rent Free Accommodation at the rate applicable to Central Government Employees posted in 'B' Class cities with effect from 1.10.1986 and for a direction to the respondents to release the House Rent Allowance

6/2

to them accordingly @ 15% and compensation in lieu of rent free accommodation with effect from 1.10.1986. They contend that cities in Nagaland are declared 'B' Class Cities and they are entitled to be given rent free accommodation or compensation in lieu thereof. They rely on the Presidential Order dated 8.1.62, the D.M. dated 23.9.86, the recommendation of 4th Pay Commission, the Arbitration Award relating to employees in Directorate of Census Operations who are similarly placed, the judgement in O.A. 42/89 alongwith the Supreme Court decision therein and the circumstance of the benefit extended to employees in other departments of Central Government and also point out that their representations have not yet been replied. Their submissions are the same as in the other O.A.s.

(b) The respondents have filed their written Statement.

They oppose the application. It is contended that Kohima & Dimapur in Nagaland are the only cities which are classified as 'C' Class Cities and rest of the Nagaland is unclassified and therefore the claim of applicants for House Rent Allowance at the rate payable to Central Government Employees in 'B' Class Cities is untenable. Other contentions are on the same lines as in companion O.A.s.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl. C.G.S.C. have been heard.

7. Facts in O.A. 105/95.

(a) This application has been filed on behalf of 47 Group C and D employees working under the Director, Geological Survey of India, Operation Manipur-Nagaland at Dimapur. They were not parties to O.A. 42 (8)/89 although similarly placed with those applicants and their grievance is that they are not being given benefit of

list

the order in that O.A. on the ground that they were not parties and that they are entitled to get House Rent Allowance applicable to 'B' Class Cities @ 15% and also compensation @ 10% in lieu of Rent free accommodation. They claim to be entitled to such accommodation. Their representations have not brought them relief hence they have approached the Tribunal. They have raised contentions similar to these as have been raised by the applicants in the other companion O.A.s. They pray for an order for payment of House Rent Allowance at B-2 Class City rate with effect from 1.10.86 to the staff in Group C and D by extending the benefit of judgement and order in the earlier O.A. They also rely on the (pre-review) decision in O.A. 48/91.

(b) Although respondents could not file written statement so far we have permitted Mr. G.Sarma, the learned Addl. C.G.S.C. to make his submissions on instructions as may have been received and the learned counsel adopts the contentions urged by the respondents in their written statement in answer to O. A. 48/91.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl. C.G.S.C. have been heard.

Points

8. The points that arise in all these applications for consideration in common are as follows :

- i. Whether the applicants in the respective O.A.s are eligible to the concession of Rent free accommodation ?
- ii. What are the components of the compensation payable in lieu of the rent free accommodation where it is not made available and what quantum ?
- iii. Whether the licence fee as one of the components of compensation is payable @ 10% of pay ?

iv. Whether HRA (as component of the compensation) is payable @ 15% of pay ?

v. Whether HRA otherwise is payable @ 15 % ?

vi. From what date above payments are applicable ?

vii. Whether applicants are being given differential treatment vis-a-vis other Central Government Departments ?

viii. What relief, if any ?

9. Since all the applications raise same points we shall deal with the entire material relied upon in all these cases together and also deal with submissions of learned counsel appearing for respective applicants and the respondents in the respective applications together. Our answers to above points are as indicated in the concluding part of this order for the reasons that follow.

10. Reasons :

It will be convenient to take a note of relevant Memoranda, Orders and Circulars issued by the Govt. of India from time to time in regard to providing rent free accommodation or compensation in lieu thereof in the first instance and then to take a note of the decisions cited before proceeding to examine the claim of the respective applicants.

11. Mr. S. Ali the learned Sr. C.G.S.C. representing Union of India in all these cases has strongly relied upon an old O.M. G.I. M&H. & with O.M. No. 12-11/60 Acc I, dated 2nd August, 1960 and contends that it is still in operation and holds the field. It was not brought to the notice of the Tribunal either in O.A. 42/91 or O.A. 2/94 or O.A. 48/91. It was produced in review application No. 12/94 in O.A. No. 48/91 for the first time (wrongly mentioning as 12-11/63 Acc I though copy annexed shows it as 12-11/60). Now after so many proceedings the respondents cannot describe it as a new

discovery of evidence. That is laying premium on the lapse of the Departments concerned or laches on their part. However, as it goes to the root of the matter according to Mr. Ali and as several employees of various departments are concerned and a vexed question is involved we have permitted to refer to it.

12. That O.M. restricts the concession of rent free accommodation only to a limited class of employees who are required to reside in the campus or in the vicinity of places of work where their presence on duty is essential and does not confer that benefit generally on all the employees posted in Nagaland (or N.E. Region). It is submitted by Mr. Ali that the O.M. dated 23.9.86 and the clarificatory letter dated 13.11.87 on which all the applicants have based their claim are to be read and understood as applicable to only those employees who fall within the ambit of criteria prescribed by the aforesaid O.M. (12-11/60 Acc-I dated 2.8.60) and since none of the applicants have stated that they fulfil the criteria of that O.M. they are not eligible to get rent free accommodation or compensation in lieu thereof. He submits that their claim all along has been based on a wrong assumption and as they are not at all eligible for the concession of rent free accommodation the entire edifice of their claim must fall down and as the earlier decisions were based upon erroneous hypothesis these cannot confer a right upon the applicants to get the benefit as they were never eligible for the same. These arguments have also been adopted by Mr. G. Sarma the learned Addl. C.G.S.C. Thus question of eligibility has been raised.

13. The Office Memorandum No. 11013/2/86-E-II(B) dated 23.9.86 was issued consequent upon the recommendations of the Fourth Pay Commission containing the decision of the Govt. of India relating



to grant of compensatory (City) and House Rent Allowance to Central Government Employees. It recites that the President of India was pleased to decide in modification of the Ministry's (Ministry of Finance, Department of Expenditure) O.M. No. F 2(37)-E-II (B) 64 dated 27.11.65 as amended from time to time for the Compensatory (City) and House Rent Allowances to Central Government Employees to be admissible at rates mentioned therein.

14. Under the above O.M. (dated 23.9.86) a slab-wise rate of House Rent Allowance was prescribed in place of percentage basis and (in so far as material here) it was provided that the House Rent Allowance at these rates shall be paid to all employees (other than those provided with Govt. owned/hired accommodation) without requiring them to produce rent receipts etc. It further provided that where House Rent Allowance at 15 percent of pay has been allowed under special orders, the same shall be given as admissible in A, B-1 and B-2 Class Cities.

It further provided that these orders will apply to civilian employees of the Central Government belonging to Groups B, C & D only and shall be effective from 1.10.86.

15. It is necessary to understand the true impact of this O.M. It clearly deals only with the quantum of House Rent Allowance payable from 1.10.86 to all Central Government employees in A, B-1 and B-2 Class cities and does not refer to compensation payable in lieu of rent free accommodation where such accommodation is required to be provided. It does not make any reference to eligibility for getting that concession. Rather the words "Other than those provided with Govt. owned/hired accommodation" make it inapplicable to that category of employees who are eligible for rent free accommodation. The claim of the applicants founded on the basis of this Memorandum appears to be misconceived to the extent House Rent Allowance is

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claimed as a component of compensation in lieu of rent free accommodation. With this nature of the O.M. there is obviously no reference in it to the O.M. dated 2.8.60 (12-11/60 Acc 1). The respondents however have not chosen to produce the Resolution No. 14(1)/IC/86 dated 13.9.86 or O.M. No. F 2937-E-11(B)/64 dated 27.11.65 to enlighten us whether these refer to O.M. dated 2.8.60. We cannot therefore assume that these refer to the aforesaid O.M. dated 2.8.60.

16. The claim of the applicants has to be clearly understood. It is for compensation in lieu of rent free accommodation on the hypothesis that they are entitled to it. It is the O.M. (12-11/60) dated 2.8.60 which provides for the compensation consisting of 2 components namely :

1. Licence fee @ 10% and
2. House Rent Allowance (at prescribed rate).-

subject however to the eligibility criteria prescribed therein. As far as House Rent Allowance is concerned the concept has to be understood in two different ways. One, as House Rent Allowance payable to all Central Govt. Employees except those who are eligible for rent free accommodation and two, as one of the components of compensation payable in lieu of rent free accommodation where such accommodation is not made available. It will however be rational to say that the rate of House Rent Allowance payable as part of compensation should also be the same as prescribed for all civilian employees from time to time such as under the O.M. dated 23.9.86. The applicants however have confused between the rate of House Rent Allowance as payable and eligibility to get compensation of which House Rent Allowance is one of the components. As a result of this confusion they have laid much emphasis on the payment of House Rent Allowance and its rate and have

18 not clearly shown as to under what specific rule or O.M. or decision of the Government all of them can claim the compensation in lieu of rent free accommodation.

17. The applicants rely upon O.M. No. 2(22)-E-II(B) 60 dated 2.8.60 issued by the President of India in respect of P & T staff and O.M. 41-17-61 dated 8.1.62 as the basis to contend that they are entitled to rent free accommodation as it is provided as a concession to the employees posted in Nagaland which is regarded a difficult area.

O.M. 2(22)-E-II(B) 60 dated 2.8.60 containing the order of the President of India applicable to P & T staff working in NEFA and NHTA - on the subject of revision of allowances, same provided in Clause (1) (iii) as follows :

"Rent free accommodation on a scale approved by the local administration, the P & T staff in NHTA, who are not provided with rent free accommodation, will however draw HRA in lieu thereof at the rates applicable in 'B' class cities contained in Col. 4 of paragraph I of the Ministry of Finance O.M. No. 2(22)-E-II(B)/60 dated 2.8.60".

The O.M. 41-17/61 dated 8.1.62 continued the HRA at rates of B Class cities. It is contended by the respondents in O.A. 2/94 that these concessions were sanctioned to the staff of P & T Department posted in NEFA and NHTA only.

18. As stated earlier the respondents rely upon G.I. M.H & W O.M. No. 12-11/60-Acc-I also dated 2.8.60. It stated that the position as regards the criteria laid down in O.M.s dated 26.11.49 and August 1950 for grant of rent free accommodation has been reviewed in the light of observations made by 2nd Pay Commission and it has been decided that ~~where~~ for the efficient discharge of duties it is necessary that an employee should live in or near the premises where he works it would be desirable that he should be provided with a Govt. residence which should be rent free or rent recovered at reduced rate.

reduced rates only if the nature of his duties or conditions under which they have to be performed are such that a higher scale of pay or special pay etc. would be granted but for the concession of rent free accommodation or recovery of rent at reduced rates. This O.M. was produced in Review Application 12/94 but in the body of the Review Application only a truncated portion was mentioned which gives a misleading impression.

19. Now although this O.M. (12-11/60-Acc-1) was issued on the same day on which O.M. 2(22)EII-B-60 was issued it is apparent on a plain reading of these two that these related to different subjects and did not cover the same field. Whereas the earlier one refers to cases where the concession of rent free accommodation is given to those for whom it is obligatory to stay at the office premises the latter conferred that benefit on all employees of P & T Department posted in Nagaland. The 1st O.M. however by itself does not conclusively show that such concession was not available to other employees also. That it could be so can be seen from the latter O.M. that was issued in respect of P & T staff in NHTA. Much ^{water} has flown since 1962.

20. The quest has therefore to be still continued to locate the right of the applicants to get this concession.

21. Notification No. 11015/4/86-E-II(B) dated 19.2.87 revised the earlier Memoranda on the basis of All Pay Luminous Environmental terms accepted by the Govt. on the subject of grant of compensation in lieu of rent free accommodation to Central Govt. employees belonging to Groups 'B' 'C' and 'D' as were applicable from 1.10.86 and the President was pleased to decide that these employees working in various classified and unclassified cities will be entitled to compensation in lieu of rent free accommodation with effect from 1.1.86 as under :

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- (i) Amount charged as licence fee for Government accommodation from employees similarly placed but not entitled to rent free quarters; and
- (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of the orders, dated 23.9.1986.

22. The note below clause 2 provided that for the purpose of these orders the amount charged as licence fee for Government accommodation will be taken as 10% of the monthly emoluments (7½%) in the case of employees drawing pay below Rs. 470) calculated with reference to 'Pay' in the pre-revised scales that they are drawing they would have drawn but for their option, if any for the revised scales of pay.

Under Clause 3 'Pay' for the purpose of House Rent Allowance component of compensation was to be 'Pay' as defined in FR 9(21)(a)(i).

23. The above mentioned orders however have to be read subject to Clause 6 which stated :

"These orders will apply only to the incumbents of posts which have been specifically made eligible for the concession of rent free accommodation under Government orders issued with reference to para 2 of Ministry of Works and Housing and Supply's O.M. No. 12/11/60/ACC-I dated the 2nd August, 1960".

24. The note thus restricts the concession only to those employees for whom

for the efficient discharge of duties it is necessary to live on or near the premises where they work, and should be provided with a Govt. residence rent free.

The respondents therefore deny the claim of the applicants.

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25. The above O.M. was followed by Ministry of Finance O.M. No. 11015/4/86-E-11(B) dated 13.11.87 relating to 'compensation in lieu of rent free accommodation' effective from 1.7.1987. It stated that the President was pleased to decide that Central Govt. Employees belonging to Group A,B,C and D working in various classified cities/unclassified places will be entitled to compensation in lieu of rent free accommodation as under :

- (i) Amount charged as licence fee for Government accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates)'s O.M. dated 7.8.87, and
- (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified city in terms of para 1 of O.M.s dated 23.9.86 and 19.3.87.

By the aforesaid O.M. dated 7.8.87 flat rate of licence fee was introduced on the recommendation of 4th Pay Commission for residential accommodation all over the country. By Fundamental (Amendment) Rules 1987 the Fundamental Rule 45A was correspondingly amended.

26. What is however crucial is that Clause 2 of the O.M. dated 13.11.87 provided as follows :

"Other terms and conditions for admissibility of compensation in lieu of rent-free accommodation indicated in the Ministry's O.M. dated 19.2.87 and 22.5.87 remain the same".

It therefore means that by virtue of Clause 6 of the O.M. dated 19.2.87 which applied to B,C & D Group employees the concession is confined to only those employees who are eligible to rent free Government accommodation under O.M. 12/11/60/ACC-I dated 2.8.60. The Government of India thus did not depart from the criteria as was laid down way

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back in 1960 and in the absence of any relief sought to compel the Government to extend the benefit of the recommendation to all the employees in C & D Group posted in Nagaland the criteria so prescribed could be applicable for determining the eligibility for earning the compensation in lieu of the rent free accommodation.

That would mean that all the C & D Group employees would not automatically be entitled to get it but only those falling in the limited class for whom the concession was meant would be eligible to claim it.

28. It must however be held that where independently of these O.M.s the concession of rent free accommodation is made available to all the employees then this restriction would not be valid being inconsistent with that provision. However no such provision has been brought to our notice. At the same time it is important to note that the respondents have admitted at some places that such concession is being given to all the employees. That has complicated the issue which by itself requires involved process to know exactly as to what is the true position. In this context we may refer to the written statement filed by the respondents (Subsidiary Intelligence Bureau - Ministry of Home Affairs) in O.A. 37/06. It is stated thus :

"..... at the time of Nagaland Hill Tuensang Area (NHTA) was carved out from Assam, the employees of NHTA administration were allowed the concession of rent free accommodation or HRA in lieu thereof as an incentive to attract suitable persons from outside for serving in this difficult tribal area. The benefit was subsequently, extended to other Central Govt. employees also".

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Para 8 : ".....Out of 157 group C and D officers posted at Kohima as many as 54 officers have been allotted Govt. accommodation of type-I, II, and III which would speak about the allotment of accommodation".

Para 9 : "As a matter of fact, all group C and D employees who are not allotted any Govt. accommodation are being paid HRA plus Licence Fee as is admissible to I B employees at Kohima @ 'C' class only"

(Underlined by us)

These statements indicate that the compensation (composed of licence fee plus HRA) is being paid which means the criteria of the O.M. dated 2.8.60 is not treated as applicable (to SIB under Home Ministry). At the same time it is contended in the written statement filed in O.A. 48/91 (Geological Survey of India, Ministry of Steel and Mines) that there are no instructions from the Ministry of Finance that Central Govt. Employees posted at Dimapur are entitled to rent free accommodation. In written statement in O.A. 11/95 (Directorate of Census Operations - Ministry of Home Affairs) it is stated that there is no provision for providing rent free accommodation to employees of Directorate of Census Operations, Nagaland, Kohima. (This stand and stand in O.A. 37/95 of the Home Ministry do not appear consistent and it leads to the inference that different departments are understanding the position differently and the situation is wholly confused). In O.A. 2/94 (the Department of Posts, Ministry of Communications) it is negatively stated that the allowances and concessions were sanctioned to the staff of P & T Department posted in NEFA and NHTA only implying thereby that other employees were not entitled to get the same.

30. Much emphasis has been laid by the applicants on the fact that all cities in Nagaland are 'B' class cities and HRA has to be paid at the rate payable for B class cities. Here also confusion

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persists between entitlement for compensation in lieu of rent free accommodation (Composed of licence fee plus HRA) and the rate of HRA payable otherwise than as the component of compensation and under general conditions of employment.

31. The position in this respect would be as follows :

- i. Where Govt. accommodation free of charge or rent is provided
- ii. Where such accommodation is provided on payment of licence fee by the employee to the Govt
- iii. Where compensation is paid in lieu of rent free accommodation by the Govt to the employee where such accommodation is not made available and
- iv. Where no Govt. accommodation is allotted incidental to service in which case HRA is paid by Govt. to the employee at rates prescribed from time to time and regulated by the relevant F.R.

32. The applicants have linked their claim to the cities in Nagaland being considered B class cities. Ministry of Finance O.M. No. 2(2)/93-E II (B) dated 14.5.93 refers to Ministry of Finance O.M. No. 11016/5/82-E II (B) dated 7.2.83 as amended from time to time as containing the list of cities/towns classified as 'A', B-1, 'B-2' and 'C' class for the purpose of grant of HRA/CCA to Central Govt. employees. By the aforesaid O.M. (dated 14.5.93) a re-classification was introduced on the basis of 1991 Census. The new classification became effective from 1.3.91. It shows that only Kohima and Dimapur in Nagaland have been classified as class 'C' towns. Hence according to the respondents (in O.A. 37/95 - SIB) other places in Nagaland are unclassified. The position prior thereto was governed by earlier orders of the Govt. of India.

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33. The applicants in (O.A. 11/95) rely upon O.M. No. 11015/4/86-E-II(B) dated 13.11.87. The applicants in O.A. 2/94 (Postal Department) rely upon Memo No. 41-17-61 dated 8.1.62. That provided that HRA in lieu of rent free accommodation will be payable at the rate payable to 'B' class cities contained in O.M. 2(22)-E-II (B)/60 dated 2.8.60. The applicants in O.A. 48/91 (Geological Survey of India) also rely upon the aforesaid O.M. 2(22)-E-II(B)/60 dated 2.8.60. Besides they also rely upon O.M. 11013/2/86 dated 23.9.86 (already referred to). They state that from 1.11.79 to 30.11.79 they were allowed HRA @ 25% but it was wholly withdrawn between 1.8.76 to 31.10.79. Later between 1.12.79 to 6.1.81 HRA was allowed at 7½% between 7.1.81 and 31.12.85 and from 1.1.86 they were paid at the rate applicable to 'C' class cities. According to them it should be admissible as for 'B' class cities.

34. The contentions based upon the various O.M.s noted above show that the applicants are confusing between HRA payable as component of compensation in lieu of rent free accommodation and HRA otherwise payable. As seen earlier the O.M.s dated 23.9.86 read with O.M. 12-11/60 dated 2.8.60 are relating to compensation and any grievance about the rate of HRA as part thereof can be made only by those who fulfill the criteria for eligibility to get the HRA. The applicants however have not produced any O.M. declaring all towns including Kohima and Dimapur as 'B' class cities even after the 4th Pay Commissions' report as from 1.1.1986 or after 1991 Census.

35. The applicants seek to draw support from the below mentioned decisions :

- i. (S.K.Ghosh & Ors Vs. Union of India & Ors.)
O.A. 42(G)89 dated 31.10.90 CAT Guwahati Bench :
It related to Post & Telecommunication Department.
The Bench referred to the provision for payment of HRA in lieu of rent free accommodation based on

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order dated 8.1.62 and noticing that the reduction in payment from 15% to 7½% observed that :

"Since Nagaland was considered as a difficult area from the point of view of availability of rented house, all P & T employees posted there either got rent free quarters or, where such quarter could not be provided by the Government, were given house rent at the rate applicable to 'B' class cities".

36. It was therefore held that the applicants (therein) were entitled to HRA applicable to Central Govt. employees posted in 'B' class cities which includes classifications B-1 and B-2. This part of the decision has been confirmed by the Hon'ble Supreme Court as discussed below. It is not therefore open to us to express any opinion differently.

(2) Pre-review decision in O.A. 48/91 decided on 26.11.93.

The view taken at that stage was based on the decision in O.A. 42/89 (supra) and relating to compensation. The decision mainly dealt with varying rates at which HRA was paid over the years but does not notice the distinction between payment of HRA generally and as part of compensation in lieu of rent free accommodation. The decision however could be read in the context of the Supreme Court decision arising out of O.A. 42/G/89 (supra).

37. We may now turn to the judgement of the Hon'ble Supreme Court in Union of India v/s S.K.Ghosh & Ors. (Civil Appeal 2705 of 1991) decided on 18.2.93 (which was the appeal filed against the

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order of the Tribunal in O.A. No. 42/89). The decision does not help the respondents but concludes the issue in favour of the applicants. It is submitted by the respondents in R.A. 25/94 (Postal Department) generally that the "Hon'ble Supreme Court did not mention in its' judgement about compensatory allowance and as such claim for that portion i.e. compensation @ 10% of monthly emoluments with effect from 1.7.1987 in lieu of rent free accommodation" is not tenable at all.

38. We have endeavoured in the course of above discussion to highlight the difference between payment of compensation in lieu of rent free accommodation which contains HRA as ^{one} of its components and rate of HRA payable otherwise than as part of the compensation. The judgement of the Hon'ble Supreme Court does not refer to the O.M. No. 12-11/60-ACC-I dated 2.8.60 and apparently it was not brought to the notice of Their Lordships. That O.M. which is now pressed into service leads to creating two different situations. Whatever that might be the decision is binding as to the rate of HRA. The material observations are as follows :

"The cities in the State of Nagaland have not been classified and as such the general order prescribing House Rent Allowance for different classes of cities could not be made applicable to the State of Nagaland. It was under these circumstances that the President of India issued an order dated January 8, 1962 granting House Rent Allowance to the P & T staff posted in the State of Nagaland".

39. After quoting Clause 1(iii) of the order which refers to O.M. 2(22)-E-II/B/60 dated 2nd August 1960 their Lordships proceeded to observe thus :

"It is clear from the order quoted above that the P & T employees posted in the State of Nagaland are entitled to rent free accommodation or in the

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alternative to the House Rent Allowance at the rates applicable in 'B' class cities. The Presidential Order equates the cities in the State of Nagaland for the purposes of payment of House Rent Allowance to the cities which have been classified as 'B' class".

And further;

"..... the question for our consideration is whether the respondents are entitled to the House Rent Allowance as provided for 'B' class cities by the IVth Central Pay Commission recommendations which were conferred with effect from October 1, 1986.

It is not disputed that the Presidential Order dated January 8, 1962 is still operative. We are of the view that the State of Nagaland having been equated to 'B' class cities by the Presidential Order the respondents are entitled to be paid the House Rent Allowance at the rates which have been prescribed for the Central Government employees posted in 'B' class cities. Consequently, the respondents are entitled to be paid the House Rent Allowance at the rate which has been prescribed by the IVth Central Pay Commission recommendations for 'B' class cities".

(Emphasis supplied)

40. With the above pronouncement of the Hon'ble Supreme Court it is not open to the respondents to contend that the cities in Nagaland are not declared 'B' class cities or that Kohima and Dimapur are only 'C' class cities or to contend that therefore the applicants are not eligible to claim HRA at the rate prescribed for 'B' class cities.

41. In our view, with respect, the ratio of the decision of the Supreme Court cannot be read as relating to P & T employees only. The observations underlined in the passages quoted above from the judgement clearly show that the view expressed that the cities in the State of Nagaland for the purposes of payment of House Rent Allowance have been equated to the cities which have been classified as 'B' class

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cities would apply to all Central Government employees posted in the State of Nagaland irrespective of the department to which they belong. Indeed construing it differently would lead to employees in departments other than the P & T Department being differently treated from employees of P & T Department. Such a situation cannot be contemplated. in view of Articles 14 & 16 of the Constitution. It is useful in this context to refer to Annexure-8 in O.A. 37/95 (SIB) which is a copy of Memorandum from the Assistant Director, SIB Kohima to Assistant Director/EP, IB Hqrs., New Delhi dated 23.3.94 in which in the context of the judgement of the Supreme Court and the Arbitration Award (amongst various orders) a opinion has been expressed as follows :

"In view of the Award of Board of Arbitration referred to in para-2 above, Hon'ble Supreme Court's judgement and its implementation by the P & T Department to all employees without any prejudice to petitioners and non-petitioners which has added new angle to the case, it is requested that the case may please be taken up with MHA/Ministry of Finance to extend the benefits to IB personnel also posted in Nagaland at par with P & T employees on priority basis"

42. Although the opinion is not binding on the Govt. of India it appears to us to be based on correct approach and sound. The respondents in the same O.A. have produced a copy of O.M. No. 2(2)93-E-II(B) dated 14.5.93 (also referred earlier) issued by the Ministry of Finance (Department of Expenditure), Government of India laying down the Re-classification of cities/towns on the basis of 1991 Census for the purposes of grant of House Rent Allowance (and CCA) to Central Government Employees. List II annexed thereto classifies only two cities in the State of Nagaland namely Kohima and Dimapur and those are classified as 'C' class cities. Rest of the

cities and towns would thus fall in unclassified category. However this classification prescribed for State of Natal and being contrary to the judgement of the Hon'ble Supreme Court (supra) it cannot prevail and the O.M. has to be looked upon as ineffective during the period prior to the date of its issue since in our opinion the decision of the Supreme Court would be applicable only to those Govt. orders ^{as} were operating when that O.A. (42/G/89) was filed and till those orders were changed by the Govt. of India.

43. Thus we hold that the applicants though have not claimed that they fulfil the eligibility criteria under O.M. No. 12-11/60 dated 2.8.60 still they are entitled to get House Rent Allowance at the rate prescribed for 'B' class cities to the Central Government employees. It will be payable at the rate of 15% from 1.1.1986 to 30.9.86 and from 1.10.1986 at flat rate prescribed under O.M. dated 7.8.87 (read with O.M. dated 13.11.87 supra) read with Notification GSR No. 623 (E) amending the Fundamental Rule 45A with effect from 1.7.1987.

44. We now turn to the topic of compensation.

45. On the question of payment of compensation in lieu of rent free accommodation also in our view, with respect, the judgement of the Hon'ble Supreme Court (supra) must be held binding and therefore despite our view expressed in the foregoing discussion that the O.M. 12-11/60 dated 2.8.60 is not superseded and ordinarily the compensation would be payable only to those who fall within the eligibility criteria thereunder; that cannot be adopted or applied for the following reasons:

46. In order to understand the ratio of the Supreme Court decision, since it was rendered on appeal against the decision of this Tribunal which is confirmed except the modification as regards arrears to be paid, it will be necessary to note

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the nature of claim made in that O.A. and the finding of this Tribunal.

47. The case of the applicants (in O.A. 42/89) on the point as stated in the application was as follows :

Para 4(a) "That while the plaintiffs are posted in the State of Nagaland, they are entitled to Rent-free accommodation under the orders of the Ministry of Finance, Union of India, New Delhi

Para 4(b) That where the Government servants, entitled to rent free accommodation not provided house/quarter by the Government, the rate of House Rent Allowance to such employees was being regulated vide Director General, Post & Telegraph letter No. 41-17/61 P & A dated 8.1.62. Such category of staff while posted in Nagaland were entitled to get House Rent Allowance at the rate applicable to employees posted in 'B' class cities".

Para 4(c) That when such employees were thus allowed and drawing the House Rent Allowance at par with employees posted to 'B' class cities some orders contradictory to each other were issued by various respondents on various dates

Para 4(d) The Govt. of Nagaland vide their Office Memorandum No. FIN/ROP/45/75 dated 16.8.75 has allowed their employees belonging to the category in which the applicants fall, House Rent Allowance at the rate which rate is higher admissible to the employees of even the 'B' class cities the other Central offices located in Nagaland are also allowing the increased rate of House Rent Allowance when employees of such departments are posted in Nagaland.

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Para 5 (a) The Government of India and the other Respondents have themselves agreed in the past that the employees placed in this category (i.e. entitled to free-accommodation and not provided with accommodation in Nagaland) shall be given the House Rent Allowance at par with 'B' class cities.

With these main averments they sought the following relief :

"All the employees when posted in Nagaland, who are entitled to rent-free accommodation and the same is not provided for by the Government be allowed to draw the House Rent Allowance as is admissible to the employees posted in 'B' class cities as categorised in the Government of India letter No. 11013/2/86-E.III(B) dated 23.9.86".

(Emphasis supplied)

The same was claimed with effect from May 1980 onwards.

48. It would appear from the above nature of their pleadings that the claim for House Rent Allowance at the rate of 'B' class cities was made on the assumption that all the employees posted in Nagaland were entitled to rent free accommodation or compensation in lieu thereof and their grievance was as regards the rate of House Rent Allowance as one of the components of compensation in lieu of rent free accommodation. If the G.I.M.H & W.O.M. No. 12-11/60-ACC dated 2.8.60 is kept in view then clearly the whole basis of the claim was wrong. The O.A. was filed by 107 P & T employees but it is not stated in the application that all or any of them fulfilled the eligibility criteria prescribed thereunder. Even so the respondent (in that case) did not deny categorically that all the employees posted in Nagaland were not eligible for rent free accommodation.

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compensation in lieu thereof when the tenor of the application was to aver that all Central Government employees posted in Nagaland were eligible for the same. Worse still the respondents neither produced nor relied upon the above mentioned U.A. (12-11/60) dated 2.8.60.

49. It would be interesting to note the material statements made in the written statement (in that case) by the respondents which are set out below :

para 2 "respondents beg to state that as per the D.G. P & T letter No. 41-17/61 P & A dated 8.1.62 the P & T staff posted in NHTA (now renamed as Nagaland) are entitled to rent free accommodation."

para 3 ".....the payment of HRA to P & T staff in lieu of rent free accommodation was regulated upto April, 1980 as per above letter dated 8.1.62."

para 4 "The Govt. of India vide orders have revised the rate of HRA admissible in lieu of rent free accommodation with effect from May, 1980.

para 12 "the respondents beg to state that the P & T staff posted in Nagaland are being paid the HRA in lieu of rent free accommodation correctly at the rate fixed by the Govt. of India".

(Underlines supplied)

The anxiety of the respondents was thus to justify the rate of HRA that was being paid and which was disputed by the applicants and in that process they did not dispute rather - accepted the position that all the applicants (P & T staff) posted in Nagaland were entitled to get rent free accommodation and their

defence related only to the rate of HRA as one of the components of compensation in lieu of rent free accommodation.

50. With ^{the} above nature of the case the then learned Members of this Bench observed in the order dated 31.10.90 as follows :

Para 1 " Briefly stated the facts of the case are that Telecom and Postal employees posted anywhere in Nagaland were provided with rent free accommodation. If they were not given Government accommodation, they were entitled to House Rent Allowance as in 'B' class cities".

Para 3 " On behalf of the Central Government a written statement was filed, followed, on our orders, by a clarificatory statement. In this none of the facts mentioned by the petitioners and summarised in the above paragraph were disputed.....".

Para 4 " Since Nagaland, irrespective (of) the stations of the entire territory, was considered as a difficult area from the point of view of availability of rented house, all P & T employees posted there either got rent free quarters or, where such quarter could not be provided by the Government, were given house rent at the rate applicable to 'B' class cities".

"It appears to us that the HRA is paid by the Central Government for compensating an employee on account of his residential accommodation in the place of posting".

(Emphasis supplied)

With the above conclusions it was held that the applicants were entitled to House Rent Allowance applicable to Central Government employees posted in 'B' class cities which included the classifications B1 & B2 (from 18.5.1980).

51. It is true that the decision related only to P & T employees and the core of controversy decided was as regards the rate of HRA that was payable. However the impact of the decision is to hold

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that all the employees of P & T Department posted in Nagaland were entitled to get rent free accommodation or compensation

in lieu thereof. The O.M. 12-11/60 dated 2.8.60 obviously was not invoked to deny that benefit to them. Apparently there was no coordination between the concerned Ministries of the Govt. of India in formulating the defence in that case and that resulted in the aforesaid O.M. not having been relied upon which could ^{restrict} ~~restrict~~ the eligibility criteria.

51A. We have seriously considered the aspect whether since that decision related only to P & T employees and although it became applicable to all employees of that Department notwithstanding the O.M. (12-11/60) dated 2.8.60 whether a different view should be taken in the light of the said O.M. (12-11/60 2.8.60) in the instant applications which relate to different departments of the Govt. of India other than P & T Department except O.A. 2/94 which is filed by Postal Employees who are fully covered by the decision in O.A. 42/89 (*supra*). Consistently with the view we have indicated on the applicability of O.M. 12-11/60 dated 2.8.60 it would have been open to us to take a different view than taken in O.A. 42/89 in respect of departments other than P & T. We are not however persuaded to do so for two reasons. Firstly, it having been held that the concession of rent free accommodation or compensation in lieu thereof was available all the employees posted in Nagaland which position was not controverted by the Government of India even in respect of P & T employees, we think that that principle should be applied to employees of other Departments concerned in the instant applications also in order to avoid resultant discriminatory treatment to employees of other Departments being ^{meted} ~~meted~~ out. Secondly, we are of the opinion that the judgement of the Hon'ble

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Supreme Court touching the above aspect does not leave it open to us to take a different view.

52. We therefore now turn to the judgement of the Supreme Court (dated 18.2.93) once again. The opening passage reads :

"Group 'C' and 'D' employees of Telecommunications and Postal Department posted in the State of Nagaland approached the Central Administrative Tribunal Guwahati seeking a direction to the Union of India to pay them the House Rent Allowance at the rates as admissible to the employees posted in 'B' class cities"

Proceeding further Their Lordships' referred to the order of the President of India dated January 8, 1962 and set out the portion 1.(iii) (already quoted above by us) reading as follows :

"1. (iii) Rent free accommodation on a scale approved by the local administration...The P & T staff in NHTA who are not provided with rent free accommodation will, however draw HRA in lieu thereof at the rates applicable in 'B' class cities contained in Col. 4 Paragraph 1 of the Ministry of Finance O.M. No. 1(22)-EII(B)/60 dated the 2nd August, 1960".

and proceeded to observe that :

"It is clear from the order quoted above that the P & T employees posted in the State of Nagaland are entitled to rent free accommodation or in the alternative to the House Rent Allowance at the rates applicable in 'B' class cities

Lastly, Their Lordships observed :

"We see no infirmity in the judgement of the Tribunal under appeal. We agree with the reasoning and the conclusions reached therein

53. The respondents (Govt. of India) did not urge before the Supreme Court that the words 'who are not provided with rent free accommodation' occurring in the order of the President dated 2.8.60,

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meant only those employees who were within the eligibility criteria prescribed in G.I. M.H and W, O.M. No. 12-11/60 ACC-I dated 2nd August, 1960 as is sought to be contended in the instant O.A.s. As stated earlier it follows from the judgement that all the employees of the P & T Department posted in Nagaland irrespective of being covered by O.M. 12-11/60 dated 2.8.60 or not were held to be entitled to rent free accommodation or the compensation in lieu thereof. On a parity of reasoning and with no rational criteria to differentiate employees of departments other than of P & T employees being discernible we are of the view that the benefit of the judgement should be available to the applicants in the instant applications who are posted in Nagaland without applying the criteria in the O.M. dated 12-11/60 dated 2.8.60. We hold that the respondents are estopped from taking up a stand in the instant cases relying upon the said O.M. inimicability with what was held by the Supreme Court in the aforesaid judgement. The respondents must take the consequences of the failure to draw the attention of the Tribunal or the Hon'ble Supreme Court to the O.M. 12-11/60 dated 2.8.60 in the proceedings in O.A. 42(G)/89. We further hold that the said O.M. though not revoked or withdrawn so far by the Govt. of India has ceased to have any efficacy or applicability in the instant cases being inconsistent with the judgements of the Supreme Court and Central Administrative Tribunal in O.A. 42 (G)/89 and it is not open to the respondents in the instant cases to invoke ^{and} apply the same in order to deny the concession of rent free accommodation or compensation in lieu thereof to the respective applicants posted in State of Nagaland. We further hold that the latest O.M. issued by Ministry of Finance (Expenditure) O.M. No. 2(25)/92/E-II-B dated 16.5.1994 (discussed below) also does not alter the above position as it does not contain fresh orders but is based on the very O.M. 12-11/60 dated 2.8.60 which can no longer

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be applicable to the applicants as held in the preceding discussion.

✓ We read the judgement of the Hon'ble Supreme Court, with respect, as conclusive on both the points namely entitlement of rent free accommodation or compensation in lieu thereof as well as rate of House Rent Allowance to be payable as for 'B' class cities.

54. The position that would emerge in the light of above discussion would be as follows :

- (i) The O.M 12-11/60-ACC-I dated 2.8.60 is still operative.
- (ii) By reason of the aforesaid OM which governs the OMs dated 23.9.86 and 13.11.87 the concession of compensation in lieu of rent free accommodation would be available only to those employees who fulfil the criteria of eligibility prescribed under the OM aforesaid dated 2.8.60.
- (iii) There has been no decision of the Govt. of India entitling the Central Government Employees posted in Nagaland (except who are eligible for the concession of rent free accommodation or compensation in lieu thereof under O.M. 12-11/60 ACC-I dated 2.8.60) to get the concession of rent free accommodation or compensation in lieu thereof.

However, even with the above conclusions at (i) to (iii) the relief of compensation cannot be refused to the respective applicants in view of the decision of the Hon'ble Supreme Court.

- (iv) The compensation mentioned above consists of licence fee plus House Rent Allowance.
- (v) The House Rent Allowance even for the purposes of compensation has to be paid as prescribed for 'B' class cities with effect from 1.10.1986 when the recommendations of the IVth Central Pay Commission were enforced.
- (vi) House Rent Allowance where payable to the applicants apart from as a component of compensation in lieu of rent free accommodation will also be payable at the rate payable for 'B' class cities to Central Government employees.
'B' cities include cities classified as B1 and B2 (as held in O.A. 42 (G)/89).

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55. In O.A. 48/91 claim is made for payment of House Rent Allowance @ 15% of pay per month from 1974 to 30.6.87 and House Rent Allowance compensation @ 25% from 1.7.87 onwards. In view of conclusions recorded above relief will be granted only to the extent indicated below in the final order, consistently with the original order.

56. In O.A. 2/94 the principal claim is made for a declaration that employees of Postal Department posted in Nagaland are entitled to House Rent Allowance applicable to the Central Government Employees in 'B' class cities with effect from 1.10.1986. It is also prayed that relief may be granted in respect of compensation in terms of O.M. dated 13.11.87.

Both these reliefs will be granted to the extent indicated below in the final order consistently with the payments as may have already been made under original order dated 17.3.94.

57. In O.A. 11/95 two fold relief is prayed for. Firstly a declaration is sought to the effect that all Group 'C' & 'D' employees of the Directorate of Census Operations posted in Nagaland are entitled to House Rent Allowance as well as compensation in lieu of rent free accommodation applicable to Central Govt. Employees posted in 'B' class cities with effect from 1.10.1986. These prayers will be granted to the extent indicated below in the final order. Secondly a direction is sought to the respondents to release the arrears with effect from 1.10.1986 towards the two reliefs claimed in the declaration. This also will be only granted as indicated below.

58. In O. 37/95 also a declaration is sought coupled with direction to pay the arrears from 1.10.1986 towards House Rent Allowance @ 15% and compensation in lieu of rent free accommodation at the rate applicable to Central Government Employees posted in

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'B' class cities. Here also relief will be granted as indicated below. from 1.10.1986 and 1.7.1987 respectively.

In O.A. 105/95 applicants pray for House Rent Allowance at the rate payable to B-2 class cities and compensation on the lines in O.A. 48/91.

59. A note of a recent Ministry of Finance (Expenditure) O.M. No. F 17(2)-E-II (A)/93 containing copy of O.M. No. 2(25)/92/E-II (B) dated 16.5.1994 issued by the same Ministry is necessary to be taken. That is issued on the subject of grant of compensation in lieu of rent free accommodation.

(It is published at item 44 in journal section of 1995 (1) SLJ P.55). It provides as follows :

" 2. The matter has been considered and the President is pleased to decide that the Central Government employees who are entitled to the facility of rent free accommodation in accordance with the Ministry of Urban Development O.M. No. 12-II/60-ACC-I dt. 2.8.60 and who have not been provided with such accommodation, will be entitled to compensation in lieu of rent free accommodation as under :

(i) The lowest amount charged as licence fee for the entitled type of accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates) above mentioned O.M. dt. 26.7.93 and

(ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of para 1 of this Ministry's O.M. No. 111013/2/86-E.II(B) dt. 23.9.83 for Central Govt. employees belonging to Group 'B' 'C' & 'D' and para 1 of O.M. No. 11013/2/86-E.II(B) dt. 19.3.87 for Central Government employees belonging to Group 'A'.

3. These orders take effect from 1.7.93, the date from which the flat rate of licence fee was revised.

4. All other conditions, laid down in this Ministry's O.M. No. 11015/4/86-E.II (B) dt. 19.2.87, 22.5.87 and 4.5.88 shall continue to be applicable, while regulating grant of compensation in lieu of rent free accommodation under these orders".

60. This notification continues the provisions contained in O.M. No. 12-11/60-ACCI dt. 2.8.60 (considered above). It means that these employees who are eligible to get the compensation in lieu of rent free accommodation under that O.M. will be governed by the formula now laid down with effect from 1.7.93. As already indicated above it is of no help to the respondents to deny the claim of the applicants so long as it is based on the O.M. dated 2.8.60. However it would be open to the Govt. of India to issue fresh orders without correlating it to the aforesaid O.M. and laying down a formula independently thereof as may be considered necessary.

61. We have referred in the course of above discussion to the material produced by the parties in all the applications together as well as to the record of O.A. 42(G)/89 which we called for, and we have done so bearing in mind the requirement of service jurisprudence and in order to avoid the possibility of conflicting decisions on the same points being rendered if each case were to be separately decided strictly on the basis of material produced by the parties in each case. That could be the correct way in a technical sense but would have frustrated the cause of justice as the questions arising in all the applications are almost identical touching service matter. We have not specifically referred to other material or the award referred to in the respective applications as that was not necessary to decide the questions in issue and would have unnecessarily burdened the judgement. However we have perused the said material.

62. The above discussion also leads to the conclusion that the applicants who belong to different departments of Govt. are being discriminated vis-a-vis employees of Posts & Telecommunications Department in whose case the judgement of the Tribunal in O.A. 42/89 has been implemented.

63. Lastly effective dates for payment have to be indicated. Although some of the applicants have laid a claim for the period prior to 1.1.1986 that cannot be granted. We would follow the date indicated in the judgement of the Supreme Court (Supra) namely 1.10.1986. In that case although Tribunal granted the claim from 18 May 1980 Their Lordships have modified that direction in following terms :

"We are, however, of the view that the Tribunal was not justified in granting arrears of House Rent Allowance to the respondents from May 18, 1980. The respondents are entitled to the arrears only with effect from October 1, 1986 when the recommendations of the Central Pay Commission were enforced".

We therefore adopt the date 1.10.1986 as the basic date for granting relief to the applicants even though the claim may have been made for a period before prior thereto.

This will be subject to concerned employees being in service on that day. For employees posted subsequently the date of posting will be taken into account.

64. However we are not in a position to specify as to for how long the said benefit would continue. It would depend upon the policy decisions taken by the Government of India from time to time in the exigencies of the situation. To the extent that from 1.10.1986 till the dates of the filing of the respective applications the applicants would be entitled to get the relief there does not arise any difficulty. ^{But as} noted earlier, from 1.3.1991 the cities and towns have been re-classified under O.M. dated 14.5.1993 on the basis of 1991 Census. Although the classification prevailing under O.M. dated 7.2.1983 as amended from time to time lastly by OM dated 5.7.90 would be subject to the decision of the Supreme Court which was rendered on 18.2.1993 the same cannot be said about the reclassification introduced by OM No. 2(2)/93-E-II(B) dated 14.5.1993. It will be for the respondents

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to examine the impact thereof in the light of the discussion in this order and regulate the payment accordingly for the period as from and subsequent to 1.3.1991 until further change has been introduced. We make it clear that as the said O.M. dated 14.5.1993 is not the subject matter of these applications we do not express any opinion about its applicability or otherwise or extent thereof as to the payment of compensation ^{and} of HRA and if any of the applicants would feel aggrieved with any action taken by the respondents on its basis they will be at liberty to pursue their remedies in accordance with the law.

65. We are not impressed by the objection of limitation raised by the respondents in O.A. 48/91 and reject the same.

66. In conclusion we answer the points formulated as follows :

Point i	:	Yes
Point ii	:	Licence fee plus House Rent Allowance - Quantum as below
Point iii	:	Yes (10%)
Point iv	:	Yes - at the rate applicable to Central Government Employees in 'B' Class Cities. (including B1 or B2) upto 1.3.1991 and thereafter as indicated in the order below :
Point v	:	Yes - as above
Point vi	:	As indicated in final order below
Point vii	:	Yes ^{vis-a-vis} vis-a-vis P & T Department
Point viii	:	As per final order below.

67. In the result following order is passed in respect of each O.A. separately.

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ORDER

D.A. 48/91

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage, or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date but it shall not be less than 15% of monthly pay for the period between 1.10.1986 and 14.2.1995.
- (c) Arrears from 1.10.1986 upto 14.2.1995 ^{be} paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants for the aforesaid period in compliance with the original order dated 26.11.1993 (set aside on review on 14.2.95)
- (d) No recovery shall be made of any amounts paid in compliance with the order dated 26.11.93 upto 14.2.95.
- (e) Future payment from 15.2.1995 to be regulated in accordance with clause (a) above.


14.2.95

(f) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto 14.2.1995 payable under the original order dated 26.11.93 (set aside on review on 14.2.95) subject to adjustment of amount as may have already been paid for this period in compliance with the original order dated 26.11.93 upto 14.2.95.

(c) No recovery shall be made of any amounts paid in compliance with the order dated 26.11.93.

(d) Future payment to continue from 15.2.95 subject to clause (a) above.

(e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

D.A. allowed in terms of above order. No order as to costs.

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D.A. 2/94

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.86 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 onwards, and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate shall be adopted as 15% of monthly pay under the original order dated 17.3.1994 with effect from 1.10.1986 till 21.8.1995 (when the said order was set aside) and as from 22.8.1995 the rate as may be applicable whether on percentage basis or slab basis under the existing Government Memoranda.
- (c) Arrears from 1.10.1986 upto 21.8.1995 to be paid as indicated in clause (b) above subject to the adjustment of the amount as may have already been paid for this period in compliance with the original order dated 17.3.94 upto 21.8.95.
- (d) No recovery shall be made of any amounts paid in compliance with the order dated 17.3.1994.
- (e) Future payment from 22.8.1991 to be regulated in accordance with clause (a) above.

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(f) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of this order by the respondents.

2 (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid @ 10% of monthly pay for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto 21.8.1995 payable under the original order dated 17.3.1995 (set aside on 21.8.1995) subject to adjustment of amount as may have already been paid for this period in compliance with the original order dated 17.3.94 upto 21.8.95.

(c) No recovery shall be made of any amounts paid in compliance with the order dated 17.3.1994.

(d) Future payment from 22.8.1995 to be made under this order.

(e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of this order.

O. A. allowed in terms of above order. No order as to costs.

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D.A. 11/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.
- (c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period.
- (d) Future payment to be regulated in accordance with clause (a) above.
- (e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the



case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

- (b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.
- (c) Future payment to be regulated in accordance with clause (a) above.
- (d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

O.A. 37/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.

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(b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.

(c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period.

(d) Future payment to be regulated in accordance with clause (a) above.

(e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.

(c) Future payment to continue from 23.8.95 to be regulated in accordance with clause (a) above.

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(d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

O.A. 105/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1 (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.

(b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.

(c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have been paid to the respective applicants during the aforesaid period.

(d) Future payment to be regulated in accordance with clause(a) above.

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(e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto the case may be) upto date.

(c) Future payment to be regulated in accordance with clause (a) above.

(d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Certified to be true Copy
प्राप्ति प्रविलिखि

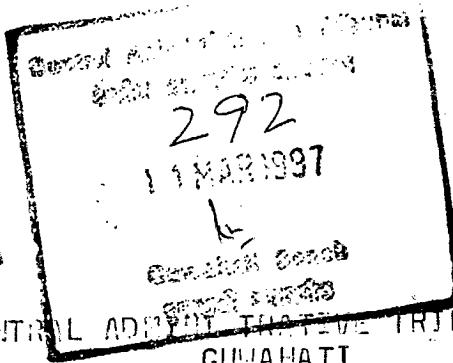
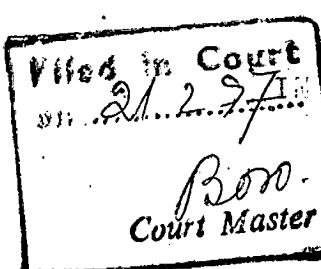
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John
12/10/95
COURT OFFICER

न्यायालय अधिकारी

Central Administrative Tribunal

संघीय प्रशासनिक अधिकारी
Guwahati Bench, Guwahati-781006
गুৱাহাটী সংস্কৰণ, গুৱাহাটী-৬



83
Filed by J.D.
A.K.Chand 20/2/97
Addl. Central Govt
Standing Counsel

In the matter of :-

O.A. No.28 of 1996

Shri H.L. Dey & others

.... Applicants

-Versus-

Union of India & others

.... Respondents

Written statement for and on behalf of
Respondents Nos. 1, 2 and 3.

I, *M. Venkatesh* Assistant Director,
Subsidiary Intelligence Bureau, Ministry of
Home Affairs, Government of India, Guwahati,
do hereby solemnly affirm and say as follows :-

- 1) That with reference to the paragraph 1, 2, 3, 4.1, 4.2 & 4.3 of the application, the Respondent have no comments.
- 2) That with reference to the paragraph 4.4 of the application, the Respondents beg to state that No city/town in Nagaland has been classified on the basis of population for the purpose of grant of HRA/CCA as 'B' class city. Except for Kohima and Dimapur, the entire State of Nagaland is unclassified for the purpose of HRA. Even Kohima and Dimapur have been classified only as 'C' class for the purpose of HRA on the basis of 1991 census vide M.O.F O.M. No.2(2)/93-E-II(B), dated 14-5-1993. As such the question of payment of HRA to the Central Govt. employees and those of IB at the rates applicable to 'B' class city in lieu of rent free accommodation does not arise.

MS. C.I.Z. Sen
MS. 20.2.97

Under the existing policy, cities/town are classified for the purpose of grant of HRA/CCA on the basis of their population as reflected in a decennial census. Since, no place

in Nagaland qualifies for classification as 'B' class city. Central Govt. employees posted in the State are not entitled to HRA at 'B' class city rates in lieu of rent-free accommodation.

3) That with reference to the paragraph 4.5 of the application, the Respondents beg to state that the contents of the para are denied that employees are entitled to HRA and compensation at the rate applicable to 'B' class city, as explained in para 4.4. above.

4) That with reference to the paragraph 4.6 of the application, the Respondents beg to state that before the recommendation of the Third Central Pay Commission were implemented, the Central Govt. employees posted in Nagaland were getting HRA at the rates which corresponded to the then 'B-2' class city rates i.e. 7-1/2% of pay. The rate of HRA payable in 'B-2' class cities was improved by the third Pay Commission from 7-1/2% to 15% of pay subject to a maximum of Rs.400/-P.M. This applied to the cities classified as such in accordance with the population criterion and not to places where HRA in lieu of rent-free accommodation was admissible under special orders, as in the case of Nagaland. However, certain Central Government Offices in Nagaland erroneously started paying HRA to their employees @ 15% of pay. When this came to the notice of the Govt., it was decided in March, 1980 that the rate of HRA in lieu of rent-free accommodation in Nagaland should be paid at the rate of 7-1/2% of pay. However, to avoid financial hardship to employees who were already drawing HRA @ 15% of pay, HRA was restricted to 7-1/2% of pay and the balance 7-1/2% was treated as personal allowance with the stipulation that future recruits would get HRA @ 7-1/2% of pay only.

It may be added that in case of Postal employees there are specific orders regarding facility of R.F.A. or H.R.A. in lieu thereof. Similarly IB, employees posted not only in Nagaland but also all over the country are entitled to the benefit of R.F.A. Or H.R.A. in lieu thereof on conferee basis. The consolidated order conferring the benefit to the executive staff was issued by M.H.A. vide their order No.2/1/76-FP.V

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dated 31-12-76 to be read with 8/Terms (c)/81(1)-FP dtd.5-9-85. Further this benefit of RFA/HRA was extended to all other cadres of IB by the Govt. vide MHA letter No.27013/7/86-PF.V(III), dtd.13-5-1986 and elaborated vide letter No.16/Terms(c)/89(3)FP.V dated 28-9-94.

Whereas the P & T employees, in the matter of grant of HRA, are covered by the provisions of DGP&T O.M. NO.41-17-P&T dated 8-1-62; the employees of Intelligence Bureau throughout India (including employees posted in Nagaland) are governed by the provisions of orders of MHA No.2/1/76-FP.V dated 31-12-76 to be read with No.8/Terms(c)/81-PF dated 5-9-85 as amended from time to time vide MHA's letter No.27013/7/86-FP.V(III) dated 13-5-86 and elaborated by No.16/Terms(c)/89(3)-FP.V dated 28-9-94. Thus the case of employees of IB should be decided with reference to the provisions of these orders and not with reference to the provisions of O.M. of 1962 issued by BGP&T. It will be apparent from the provisions of these two separate sets of orders that only the P&T employees posted in Nagaland are entitled to HRA as applicable in 'B' class cities in lieu of rent free accommodation. There is no such condition in case of employees of IB. Further the employees of IB, posted anywhere in India, are governed by the same set of rules and any deviated decision taken in respect of employees of IB posted in Nagaland will have wide repercussions as the same benefit cannot be denied to the employees of IB posted outside Nagaland.

5) That with reference to paragraph 4.7 of the application, the Respondents beg to state that it is denied that the employees were not given benefits as per the recommendations of 4th Pay Commission. Moreover, attention is invited to the fact that employees of IB were given the benefits of HRA on the lines of judgement given in the case of employees of Directorate of Census operations w.e.f. 1-5-76 to 31-3-80 as admissible to the employees of P & T Deptt. also vide IB order No.3/Terms(c)/87(5) dtd. 25-4-1989.

The employees of Intelligence Bureau posted in Nagaland are entitled to the facility of rent free accommodation and if the accommodation is not provided to them, they are entitled to HRA in lieu thereof at the rate of 7-1/2% of pay upto the implementation of the 4th Pay Commission Report. After the 4th Pay Commission, HRA is being paid to Central Govt. employees

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on slab basis with reference to pay of the employees. Therefore, the employees of Intelligence Bureau posted in Nagaland are entitled to HRA at 'C' class city rates.

- 6) That with reference to paragraph 4.8, 4.9, 4.10, 4.11 of the application, the Respondents have no comments.
- 7) That with reference to paragraph 4.9 and 4.10 of the application, the Respondents beg to state that the contents of the para are correct but the Hon'ble CAT in its judgement dtd. 22-8-95 has allowed the benefits to the applicants only. House rent allowance at the rate applicable to Central Govt. employees in 'B' (B1-B-2) class cities/towns for the period from 1-10-86 or actual date of posting in Nagaland if it is subsequent there to as the case may be up to 28-2-91 and at the rate as may be applicable from time to time as from 1-3-1991 onwards and continue to pay the same and the licence fee at the rate 10% of monthly pay (subject to where it was prescribed at a lesser rate depending up on the extent of basic pay) with effect from 1-7-1987 or actual date of posting in Nagaland if it is subsequent there to as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Govt. of India or till rent free accommodation is not provided.
- 8) That with reference to paragraph 4.12 of the application the Respondents beg to state that since the judgement of the Hon'ble CAT was in respect of applicants, the payment of HRA/RFA was allowed in favour of petitioners only.
- 9) That with reference to paragraph 4.13, 4.14, 5, 5.1, 5.2, 5.3, 5.4 and 6 of the application, the Respondents have no comments.
- 10) That with reference to paragraph 5.5 of the application the respondents beg to state that the judgement dtd. 22-8-95 passed by Hon'ble CAT Guwahati is O.A. No. 37/95 allowing the appeal of the petitioners for grant of HRA was implemented in respect of petitioners only, hence, No. comments.

(5)

11) That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.

VERIFICATION

I, S. Sen *[Signature]* Assistant Director,
Subsidiary Intelligence Bureau, Ministry of Home Affairs,
Government of India, Guwahati, do hereby declare that the statements made in this writ statement are true to my knowledge derived from the records of the case.

I sign this verification of this 19th day of February, 1997 at Guwahati.

[Signature]
DEPOSITION
Assistant Director
Subsidiary Intelligence Bureau
(SIB), Govt. of India
[Signature]